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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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Applicant	MJ Products Association
Applied for Mark	GLAMOUR CAMPER
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Application of: M J Products Association LLC

Serial No. 87/584821

Filed: August 25, 2017

Mark: GLAMOUR CAMPER

Examining Attorney: Steven W. Ferrell Jr.

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APPLICANT'S BRIEF ON APPEAL

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INTRODUCTION

Pursuant to the Notice of Appeal filed with the Trademark Trial and Appeal Board on May 30, 2018, Applicant, MJ Products Association LLC appeals from the Examining Attorney's final refusal to register the mark GLAMOUR CAMPE for insect repellent sunscreen cream with glitter in International Class 005. The Examining Attorney has refused registration on the basis of likelihood of confusion under § 2(d) of the Lanham Act with the mark CAMPER AND DESIGN ("cited mark"), Registration No. 4,690,397 for sun-tanning oil in International Class 003.

Applicant requests the refusal to register be reversed because there is no likelihood of confusion between Applicant's mark and the cited mark when applied to their respective goods, channels of trade and target consumers and based on the differences in the marks' appearances, meanings and commercial impressions.

DESCRIPTION OF THE RECORD

The record consists of the original application papers and subsequent prosecution history including the Examining Attorney's Office Actions refusing registration dated December 1, 2017; June 8, 2018; and Final Office Action December 20, 2018; and Response to Applicant's Request for Reconsideration; and Applicant's Responses to Office Actions dated May 31, 2018; June 6, 2018; and Request For Reconsideration June 19, 2019. Applicant filed a Notice of Appeal and received Notice to file its brief in 60 days on October 16, 2019.

PROSECUTION HISTORY

Applicant filed its application for the mark GLAMOUR CAMPER on August 25, 2017 for Sunscreen creams .in International Class 003.

On December 1, 2017, the Examining Attorney issued an initial Office Action stating in the first line that a search of the office records did not reveal any marks confusingly similar to Applicant's mark and then, in the following lines, refusing registration of Applicant's mark GLAMOUR CAMPER on the basis of § 2(d) of the Trademark Law based on likelihood of confusion with the mark CAMPER AND DESIGN ("cited mark") Registration No. 46903973370911, for sun-tanning oils in International Class 003.

On May 31, 2018 Applicant filed its response amending the description of goods to "insect repellent sunscreens with glitter" in International Class 005 and submitting arguments showing that there is no likelihood of confusion with Applicant's mark and the cited mark. Applicant argued the marks differ in appearance, sound, meaning (connotation) and commercial impression. Based on its arguments, Applicant requested that the Examining Attorney withdraw the refusal to register and allow the mark to proceed to publication.

On June 8, 2019 the Examining Attorney issued a Second Office Action maintaining the refusal to register Applicant's mark GLAMOUR CAMPER on the basis of § 2(d) with Registration No. 4690397for the mark CAMPER and DESIGN and declaring the Applicant's amendment of goods was incorrect, lacking the word "creams".

On December 10, 2019 Applicant filed a response amending the goods to read "insect repellent creams with glitter" and additional arguments concerning the refusal of registration based on likely hood of confusion.

The Examining Attorney issued a Final office action on December 10, 2018 again stating the description of goods was incorrect because the original term “sunscreen” was removed and refusing registration based on likelihood of confusion.

On June 19, 2019 Applicant filed a response to the Examining Attorney’s Final office action, correcting the description of goods to read “insect repellent sunscreen creams with glitter”, and presenting arguments against likelihood of confusion; a notice of appeal and a request for reconsideration of the Examining Attorney’s refusal of registration.

On October 8, 2019 the Examining attorney issued a refusal of reconsideration.

On October 16, 2019 the Trademark Trial and Appeal Board stated Applicant’s Appeal brief is due in 60 days.

ARGUMENT

A. Legal Standard

For a human brain to determine the likelihood of confusion between two trademarks, the brain must compare the two trademarks for similarities in sound, appearance, and meaning or connotation. *In re E. I. du Pont de Nemours & Co.*, 476 F.2d 1357, 1361, 177 USPQ 563, 567 (C.C.P.A. 1973). The mentally stimulated observations and perceptions when comparing the marks’ similarities or dissimilarities must be considered based on the marks in their entireties. *In re Nat’l Data Corp.*, 753 F.2d 1056, 1058, 224 USPQ 749, 750-51 (Fed. Cir. 1985); TMEP § 1207.01(b). The test is determining whether the marks are so similar that consumers will be confused as to the source of the goods or services, based upon “the recollection of the average purchaser would normally retains a general rather than a specific impression of trademarks “ TMEP Section 1207.01(b).

As a general rule, conflicting marks are to be looked at as a whole, rather than dissecting the marks into individual components. It is the overall impression that the mark as a whole creates on the average person, rather than the parts thereof, that is important. *Duluth News-Tribune v. Mesabi Publ.Co.*, 84 F. 3d 1093, 38U.S.P.Q. 1937 (8th Cir.); *Massey Junior College, Inc. v. Fashion Inst. Of Tech.*, 492 F.2d 1399, 181 USPQ 272,273(CPA) 1974).

Additions or deletions to marks need to be sufficient to avoid a likelihood of confusion, if the marks in their entirety, convey significantly different connotations or meanings resulting in commercial expressions. *See, Shen Mfg. Co. v. Ritz Hotel Ltd.*, and 393 F.3d 1238, 1245, 73 U.S.P.Q.2d 1350, 1356-57 (Fed. Cir.2004) (reversing TTAB's holding that contemporaneous use of THE RITZ KIDS for clothing items (including gloves) and RITZ for various kitchen textiles (including barbecue mitts) is likely to cause confusion, because, *inter alia*, THE RITZ KIDS creates a different commercial impression); *In re Shawnee Milling Co.*, 225 U.S.P.Q. 747, 749 (TTAB) 1985) (holding GOLDEN CRUST for flour, and ADOLPH'S GOLD'N CRUST and design (with "GOLD'N CRUST" disclaimed) for coding and seasoning for food items, not likely to cause confusion, noting that, because "GOLDEN CRUST" and "GOLD'N CRUST" are highly suggestive as applied to the respective goods, the addition of ADOLPH'S is sufficient to distinguish the marks.) TMEP Section 1207.01(b)(iii).

B. The Marks Are Different and When Viewed in Their Entireties are Sufficiently Dissimilar and Create Different Commercial Impressions Rendering Confusion Unlikely

The marks GLAMOUR CAMPER and CAMPER plus DESIGN are different in sound, appearance, and meaning or connotation. GLAMOUR CAMPER is an oxymoron expressing contra-dictionally opposing mental terms in a human brain. Anyone who has ever been a camper outdoors in a primitive environment knows that the physical and mental experiences do not

connote glamour. The combination of the words GLAMOUR and CAMPER forming Applicant's mark GLAMOUR CAMPER creates a distinctive, contra-dictional commercial impression and distinguishes from the mark CAMPER and DESIGN in the minds of humans who have had primitive camping experiences. When viewing the marks as a whole, the marks differ in sight, sound and meaning with the addition or absence of the term "GLAMOUR".

The mark does intellectually fit for a product of insect repellent sunscreen creams with glitter.

Glitter enhances the physical appearance, some opine, of sunscreen creams. Insect repellent and sunscreen creams are often required in as a camper.

Comparing the marks, several of the elements listed in the DuPont case including sound, appearance, and meaning or connotation and commercial impression are clearly dissimilar mentally, factually showing no likelihood of confusion in the minds of the public between Applicant's mark and the opposing mark.

C. The Products listed in the Applicant's Description of Goods and Registrant's registration Description of Goods are different enough to preclude likelihood of confusion of source by consumers.

Applicant's Mark, GLAMOUR CAMPER is for "insect repellent sunscreen creams with glitter".

Registrant's mark CAMPER lists numerous, completely unrelated goods in International Class 003 such as:

Aftershaves; after-shave cologne; bath gel; bath oil; bath salts; beauty masks; body cream; deodorant; body lotion for cosmetic use; oil for the body; body powders for cosmetic use; cosmetic creams; cosmetic crayons; cosmetic; and dentifrices; body deodorant; depilatory cream; eau de cologne; ;eau de parfum; eye cream; eye makeup; eye makeup removing lotion; eyeshadow; liner;

cream for the face; make up; hair decolorants; haircare preparation; hair conditioner; creams for the hair; lotion; hand creams; soaps; balms for the lips; lipstick; make up removing lotion; moisturizer; nail care medical use; shampoo; shaving cream; shaving balms; skin cleaning lotion; skin cream; moisturizing cream for the skin; soaps for skin care; face paint; creams for leather;; cobblers waxes for leather; preservative waxes for leather; preparations for polishing purpose; cleaning preparation; wax for footwear; shoebox, namely shoe polish; powder for footwear; book cream; leather bleaching preparations. And as urged by the Examining Attorney, including “sun-tanning oils.

The venerable *I.E. du Pont de Nemours* case lists, as evidence of no likelihood of confusion between trademarks, marks that are applied to different, non-competing goods, such as in this case. Sun-tanning oil is a completely different product, sold in a different market, for a different purpose, than insect repellent sunscreen creams with glitter.

In summary, to determine likelihood of confusion between GLAMOUR CAMPER AND CAMPER AND DESIGN, there are two very different but equally important reasons why there is no likelihood of confusion. First the mental impression and connotation of the marks in a consumer’s mind are extremely different images, suggesting a different source of the goods.

The products being sold under these marks are completely different and do not suggest to a consumer the same source of goods.

CONCLUSION

Due to the differences in the overall mental impressions of the marks and in the different products, it is respectfully submitted that there is no likelihood of confusion between Applicant's mark and the cited mark. Applicant respectfully requests that the Board reverse the refusal to register Applicant's mark GLAMOUR CAMPER and allow the mark to proceed to publication.

Respectfully submitted,

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Dated: December 16, 2019

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